

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FREE SPEECH COALITION, INC. et al.,)	
)	
Plaintiffs,)	Civil Action No. 2:09-4607
)	
v.)	Judge Michael M. Baylson
)	
THE HONORABLE ERIC H. HOLDER, JR.,)	
Attorney General,)	<u>DEFENDANT'S PRETRIAL</u>
)	<u>MEMORANDUM</u>
Defendant.)	

STATEMENT OF NATURE OF CASE AND BASIS FOR JURISDICTION

Plaintiffs have invoked federal jurisdiction pursuant to 28 U.S.C. § 1331. Plaintiffs raise constitutional challenges to 18 U.S.C. §§ 2257 and 2257A and their implementing regulations, which set forth age verification and recordkeeping requirements for producers of images depicting real people engaged in sexually explicit conduct. This Court previously rejected all of the various challenges plaintiffs originally raised under numerous different First Amendment theories, as well as under the Fourth and Fifth Amendments. The Third Circuit upheld this Court's rulings in many respects.

In particular, the Third Circuit affirmed this Court's dismissal of the portions of plaintiffs' First Amendment claim that "alleged the statutes and their implementing regulations unconstitutionally suppressed anonymous speech, imposed a prior restraint on protected expression, unconstitutionally imposed strict liability for failing to maintain the requisite records, and were unconstitutionally [vague]." Mem. Op. at 1 (Doc. No. 185) (citing *Free Speech Coal. v. Holder*, 677 F.3d 519, 533-36, 545 (3d Cir. 2012)). The Third Circuit also affirmed this Court's dismissal of Counts II, III, and V of plaintiffs' Complaint. *Free Speech Coal.*, 677 F.3d at 545. With respect to plaintiffs' as-applied

First Amendment claims, the Third Circuit also “affirmed this Court’s conclusions that Sections 2257 and 2257A are content neutral laws and so intermediate scrutiny is the appropriate standard of review, and that under the intermediate scrutiny test, the statutes further compelling government interests and leave open ample alternative channels of communication.” Mem. Op. at 1-2 (citing *Free Speech Coal.*, 677 F.3d at 533-36). With respect to plaintiffs’ Fourth Amendment claim, the Third Circuit remanded only an as-applied claim. Mem. Op. at 7 n.4. In sum, only three limited issues are before the Court for further factual development as outlined in this Court’s opinion of May 20, 2013. Mem. Op. at 1-2.

STATEMENT OF FACTS

Defendant submitted a Statement of Undisputed Material Facts (“SMF”) (Doc. No. 177, attachment 2) as part of his Motion for Summary Judgment (Doc. No. 177). Defendant adopts and incorporates this Statement of Undisputed Material Facts as part of this Pretrial Memorandum.¹

LEGAL ISSUES

For the Court’s convenience, defendant also provides the following summary in relation to the issues before the Court and the facts set forth in defendant’s SMF:

First, regarding plaintiffs’ remaining as-applied Fourth Amendment claim,

¹ Local Rule 16.1 calls for a “brief statement of the facts of the case” in plaintiffs’ pretrial memorandum, with “such counter-statements of the facts as may be necessary to reflect any disagreement with plaintiff[s]’ statement” in defendant’s pretrial memorandum. Plaintiffs have incorporated their 24-page Statement of Facts from their summary judgment filing as their brief statement of facts. Defendant’s disagreement with the factual assertions in that Statement, as well as the additional assertions in plaintiffs’ pretrial memorandum, are reflected in defendant’s Statement of Undisputed Material Facts, cited above, as well as defendant’s Motion to Exclude the testimony of plaintiffs’ expert witnesses (Doc. No. 182).

plaintiffs do not have standing to seek injunctive relief, and their claims are unripe. The only inspections that ever occurred took place over five years ago under prior versions of the 2257 regulations. *See* SMF ¶¶ 22-26. Currently, there is no active 2257 inspection program. *See* SMF ¶ 60. Even if a new program were established, past inspections (which themselves had their own unique circumstances) do not necessarily illustrate how any inspection might occur in the future. *See* SMF ¶¶ 12-20, 27-56, 61-63. In addition, the inspections that did occur either did not implicate the Fourth Amendment at all or were reasonable because they involved nothing more than inspections of records that producers of sexually explicit material are statutorily required to maintain. *See* SMF ¶¶ 33-56. Producers of such material have long been on notice that the ages of people appearing in their work are a subject of government concern and close regulation to ensure that minors are not exploited, and the very limited nature of the records inspections at issue is reasonable under the totality of circumstances. *See id.*

Second, with respect to plaintiffs' as-applied First Amendment claims, several plaintiffs are not engaged in the production of depictions of sexually explicit conduct nor do they have any concrete plans to produce such depictions in the future, and, thus, they have no injury-in-fact to give them standing to bring a First Amendment claim. *See* SMF ¶¶ 75-77, 99-103, 117, 119-20, 129, 131-32. Further, the universal application of the 2257 requirements is necessary in order to avoid subjective judgments and taking advantage of loopholes by the very producers subject to regulation regarding whether ages should be checked or records should be maintained for particular works, or particular performers. *See* SMF ¶¶ 67-68, 74, 78-79, 83-87, 92-96, 104-06, 110-14, 121-22, 124-27, 130, 133-34, 135-41, 143-148. None of the plaintiffs confines their

production of sexually explicit material to works that are the equivalent of illustrated sex manuals for the elderly – the only example that other courts have identified as potentially beyond the reach of the requirements. *See* SMF ¶¶ 70-73, 75-78, 84-86, 93-94, 104, 110, 118, 125, 130, 139, 146. To the contrary, all plaintiffs that have produced sexually explicit material have included young and youthful-looking individuals in their depictions. *See id.*

Finally, with respect to plaintiffs’ facial overbreadth challenge, plaintiffs cannot establish that the requirements at issue are facially invalid given their plainly legitimate sweep covering a vast array of published and otherwise widely-disseminated materials depicting people engaged in sexually explicit conduct. *See* SMF ¶¶ 149-52. Moreover, to the extent the requirements apply to truly private, noncommercial communications between intimate associates, plaintiffs cannot establish that such communications have been chilled by the existence of the 2257 requirements so as to warrant holding federal laws facially invalid on behalf of third parties not before the Court. *See* SMF ¶ 153. Accordingly, the requirements should be left intact to continue to operate as Congress intended—as a prophylactic measure designed to ensure that children are not used in the production of sexually explicit material, and that others along the chain of distribution, from secondary producers to distributors to consumers, as well as law enforcement, have some assurance and a means of verifying that the original creators of such material have checked individuals’ ages before depicting them engaged in sexual acts.

NAMES OF WITNESSES

Gail Dines, Ph.D.

Janis Wolak

Francis Biro, M.D.

Philip B. Stark, Ph.D

Charles Joyner

Stephen Lawrence, Supervisory Special Agent, Federal Bureau of Investigations

The addresses of these witnesses were provided to plaintiffs in discovery.

SCHEDULE OF EXHIBITS

This is a preliminary list of exhibits. The numbers and letters with which they are labeled for use at trial may vary somewhat from the list that follows.

Exhibit Number	Exhibit
Exhibit 1	18 U.S.C. § 2257
Exhibit 2	18 U.S.C. § 2257A
Exhibit 3	28 C.F.R. Part 75 (2006)
Exhibit 4	28 C.F.R. Part 75 (2012)
Exhibit 5	57 Fed. Reg. 15017 - 1991 Final Rule
Exhibit 6	70 Fed. Reg. 29607 - 2005 Final Rule
Exhibit 7	73 Fed. Reg. 77432 - 2008 Final Rule
Exhibit 8	Alper Deposition Exhibit 1
Exhibit 9	Alper Deposition Exhibit 2
Exhibit 10	Alper Deposition Exhibit 3
Exhibit 11	Alper's Answers to Defendant's Second Set of Interrogatories
Exhibit 12	Alper's Responses to Defendant's Second Set of Requests for Production
Exhibit 13	Barbara Alper's Responses to Defendant's First Set of Requests for Admission
Exhibit 14	Email from Baumgardner 3.7.13 re Alper Sales Revenue (1)
Exhibit 15	Email from Baumgardner 3.8.13 re Alper Sales Revenue (2)
Exhibit 16	Signed Barbara Alper's Answers and Responses
Exhibit 17	Photos by Barbara Alper Produced in discovery
Exhibit 18	ASMP Bulletin Excerpt
Exhibit 19	ASMP First Set Interrogatory & RFP Answers & Responses
Exhibit 20	ASMP RFA Responses
Exhibit 21	ASMP Second Set Interrogatory Answers
Exhibit 22	ASMP Second Set RFP Responses
Exhibit 23	Mopsik Depo Exhibit 1
Exhibit 24	Mopsik Depo Exhibit 2

Exhibit 25	Mopsik Depo Exhibit 4
Exhibit 26	Mopsik Depo Exhibit 5
Exhibit 27	Mopsik Depo Exhibit 6
Exhibit 28	Printout from bravoerotica.com
Exhibit 29	Printouts from ASMP Colorado website
Exhibit 30	Printouts & screenshots from ASMP website
Exhibit 31	Screenshots from Craig Morey website, Part I
Exhibit 32	Screenshots from Craig Morey website, Part II
Exhibit 33	Screenshots from Ned Rosen website
Exhibit 34	Betty Dodson's and Carlin Ross's Responses to Defendant's First Set of Requests for Admission
Exhibit 35	Dodson Depo Exhibit 6
Exhibit 36	Dodson Depo Exhibit 7
Exhibit 37	Dodson Depo Exhibit 8
Exhibit 38	Dodson Depo Exhibit 9
Exhibit 39	Dodson Depo Exhibit 10
Exhibit 40	Dodson Depo Exhibit 11
Exhibit 41	Dodson's and Ross's Answers to Second Set of Interrogatories
Exhibit 42	Signed Betty Dodson's and Carlin Ross's First Set of Interrogatories Answers and RFP Responses
Exhibit 43	Dodson's and Ross's Responses to Second Requests for Production
Exhibit 44	Screenshots from Dodsonandross.com
Exhibit 45	Screenshots of Questions from Dodsonandross.com
Exhibit 46	Connors document used in responding to interrogatories
Exhibit 47	Connors DVD covers
Exhibit 48	Connors First Set Interrogatory & RFP Answers & Responses
Exhibit 49	Douglas Depo Exhibit 2
Exhibit 50	Douglas Depo Exhibit 3
Exhibit 51	Douglas Depo Exhibit 4
Exhibit 52	Douglas Depo Exhibit 6
Exhibit 53	Douglas Depo Exhibit 7
Exhibit 54	Excerpt from FSC Comments on 2007 and 2008 Proposed Rules
Exhibit 55	FSC Articles of Incorporation
Exhibit 56	FSC bylaws
Exhibit 57	FSC First Set Interrogatory & RFP Responses
Exhibit 58	FSC RFA Responses
Exhibit 59	FSC Second Set Interrogatory Answers
Exhibit 60	FSC Second Set RFP Responses
Exhibit 61	FSC Dues Payments & Member Status
Exhibit 62	FSC Member Dues Statements
Exhibit 63	Screenshots from Cherry Pimps website

Exhibit 64	Screenshots from davecumblings.com
Exhibit 65	Hymes Depo Exhibit 1
Exhibit 66	Hymes Depo Exhibit 2
Exhibit 67	Hymes Depo Exhibit 3
Exhibit 68	Hymes Depo Exhibit 4
Exhibit 69	Hymes Depo Exhibit 8
Exhibit 70	Hymes Depo Exhibit 9
Exhibit 71	Hymes Depo Exhibit 12
Exhibit 72	Hymes Depo Exhibit 14
Exhibit 73	Hymes First Set Interrogatory & RFP Answers & Responses
Exhibit 74	Hymes RFA Responses
Exhibit 75	Hymes Second Set Interrogatory Answers
Exhibit 76	Hymes Second Set RFP Responses
Exhibit 77	Printouts from Daily Babylon website
Exhibit 78	Daily Babylon - tabs - full set
Exhibit 81	Levine First Set Interrogatory Answers & RFP Responses
Exhibit 82	Levine Second Set Interrogatory Answers & Declaration
Exhibit 83	Levine RFA Responses
Exhibit 81	Printout & Screenshots from Bravotube.com
Exhibit 82	Printout & Screenshots from Porn.com
Exhibit 83	Printout & Screenshots from Pornhub.com
Exhibit 84	Printouts & Screenshots adultfilmdatabase.com
Exhibit 85	Printouts & screenshots from Cougarscravekittens.com
Exhibit 86	Printouts & Screenshots from nina.com and linked sites
Exhibit 87	Printouts & Screenshots from Redtube.com
Exhibit 88	Webshows in www.nina.com
Exhibit 89	Levingston IDs and Model Releases
Exhibit 90	Levingston photos produced in discovery
Exhibit 91	Levingston printouts from blog
Exhibit 92	Levingston First Set Interrogatory Answers & RFP Responses
Exhibit 93	Levingston RFA Responses
Exhibit 94	Levingston Second Set Interrogatory Answers
Exhibit 95	Levingston Second Set RFP Responses
Exhibit 96	The Figure in Nature
Exhibit 97	Nitke Deposition Exhibit 3
Exhibit 98	Nitke Deposition Exhibit 4
Exhibit 99	Nitke Deposition Exhibit 5
Exhibit 100	Nitke Deposition Exhibit 6
Exhibit 101	Nitke Deposition Exhibit 7
Exhibit 102	Nitke Deposition Exhibit 8
Exhibit 103	Nitke Deposition Exhibit 9

Exhibit 104	Nitke Deposition Exhibit 10
Exhibit 105	Nitke Deposition Exhibit 11
Exhibit 106	Nitke Deposition Exhibit 12
Exhibit 107	Nitke Deposition Exhibit 13
Exhibit 108	Nitke First Set Interrogatory & RFP Answers & Responses
Exhibit 109	Nitke RFA Responses
Exhibit 110	Nitke Second Set Interrogatory Answers
Exhibit 111	Nitke Second Set RFP Responses
Exhibit 112	Screenshots from barbaranitke.com
Exhibit 113	San Francisco Weekly Picture 1
Exhibit 114	San Francisco Weekly Picture 2
Exhibit 115	San Francisco Weekly Picture 3
Exhibit 116	Orgasmic Women
Exhibit 117	Printouts and screenshots from dodsonandross.com
Exhibit 118	Printouts and screenshots from GAG
Exhibit 119	Steinberg Ids and Model Releases
Exhibit 120	Steinberg photos produced in discovery
Exhibit 121	Steinberg spreadsheets produced in discovery
Exhibit 122	Printouts & Screenshots from www.sinclairinstitute.com
Exhibit 123	Printouts & screenshots from www.bettersex.com, Set 1
Exhibit 124	Spreadsheet Summary - Sinclair Institute Videos & Images
Exhibit 125	Spreadsheet Summary Attachments, Set 1
Exhibit 125	Spreadsheet Summary Attachments, Set 2
Exhibit 126	Spreadsheet Summary Attachments, Set 3
Exhibit 127	Sinclair Institute Video Covers
Exhibit 128	Printouts from Adam & Eve
Exhibit 129	Sinclair Institute Catalogs
Exhibit 130	Sinclair Institute Videos
Exhibit 131	Sinclair - response to Interrog. No.11
Exhibit 132	Sinclair First Set Interrogatory Answers & RFP Responses
Exhibit 133	Sinclair response to Int. 21 (Wilson 17)
Exhibit 134	Sinclair RFA Responses
Exhibit 135	Sinclair Second Set Interrogatory Answers
Exhibit 136	Sinclair Response to Int. 21 (Wilson 17)
Exhibit 137	Townsend Enterprises Annual Reports
Exhibit 138	Erotic by Nature Description
Exhibit 139	Erotic by Nature Home Page screen capture
Exhibit 140	Nearby Café Home Page
Exhibit 141	Steinberg Redacted Model Information submitted to government
Exhibit 142	Steinberg 2013.1.14 Declaration - Second Set
Exhibit 143	Steinberg Photo Sex Book Intro

Exhibit 144	Steinberg LinkedIn Profile
Exhibit 145	Steinberg Codes Spreadsheet
Exhibit 146	Steinberg documents used in responding to interrogatories
Exhibit 147	Steinberg First Set Interrogatory & RFP Answers & Responses
Exhibit 148	Steinberg Photo AS7
Exhibit 149	Steinberg Photo AS10
Exhibit 150	Steinberg Photo DV1
Exhibit 151	Steinberg Photo DV14
Exhibit 152	Steinberg Photo DV15
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Exhibit 154	Steinberg Photo KC 14
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Exhibit 158	Steinberg's list of models and photo shoots
Exhibit 159	Wicked.com screenshot Biro Report Images
Exhibit 160	Alper - Bangkkgirls_copy[1].jpg
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Exhibit 165	Morey
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Exhibit 169	Sex Fun, Vol. 8
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Exhibit 171	Sugar Daddy #23
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Exhibit 173	Report of Francis Biro, MD
Exhibit 174	Dines CV 2013
Exhibit 175	Dines report 4.12
Exhibit 176	Figure 2 - Frequency of five top porn genres for the 5 year period January 2008 to January 2013 in the US
Exhibit 177	Figure 3 - Frequency Worldwide of top porn genres Jan 2006 to Jan 2013
Exhibit 178	Figure 4 - Frequency of five top terms used to search for teen porn
Exhibit 179	Table 1 - The top 10 search terms used to search for teen porn
Exhibit 180	Table 2 - Analysis of WordTracker search terms from SEOBook website
Exhibit 181	Table 3 - Total Google hits
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Exhibit 183	Table 5 - Comparative Growth Rates of Top Pornography Genres
Exhibit 184	Drouin curriculum vitae
Exhibit 185	Drouin expert report
Exhibit 186	Let's talk about sexting, baby (Drouin, et al 2013)
Exhibit 187	MTV AP Digital Abuse Study (2009)
Exhibit 188	Sex and tech (National Campaign 2008)
Exhibit 189	Sexting Among Young Adults (Gordon-Messer, et al)
Exhibit 190	Sexting behaviors among young hispanic women (Ferguson, 2010)
Exhibit 191	Texting, sexting, attachment, and intimacy (Drouin, et al 2012)
Exhibit 192	Declaration of Hector Bladuell (May 15 2013)
Exhibit 193	Empirical Overbreadth
Exhibit 194	Lanning 2010 Report excerpts
Exhibit 195	Linz Report
Exhibit 196	Sexting & Sexual Relationships Among Teens & Young Adults (Henderson)
Exhibit 197	Declaration of Philip Stark
Exhibit 198	Drouin Expert Report
Exhibit 199	Harris Interactive Sexting Poll
Exhibit 200	Internet Study of Cybersex Participants
Exhibit 201	Let's talk about sexting, baby (Drouin, et al 2013)
Exhibit 202	MTV AP Digital Abuse Study (2009)
Exhibit 203	Sex and tech (National Campaign 2008)
Exhibit 204	Sexting Among Young Adults (Gordon-Messer, et al.)
Exhibit 205	Sexting behaviors among young hispanic women (Ferguson, 2010)
Exhibit 206	Sexting, substance use, and sexual risk behavior (Benotsch, et al 2012)
Exhibit 207	Texting, sexting, attachment, and intimacy (Drouis, et al. 2012)
Exhibit 208	Zimmerman Expert Report
Exhibit 209	Crimes Against Children Research Center Study - Prevalence and Characteristics of Youth Sexting (CV237)
Exhibit 210	JWolak CV Apr 2013
Exhibit 211	Report of Janis Wolak
Exhibit 212	Sex and tech (National Campaign 2008)
Exhibit 213	Sexting among young adults (Gordon-Messer, et al)
Exhibit 214	Sexting, substance use, and sexual risk behavior (Benotsch, et al 2012)
Exhibit 215	Zimmerman curriculum vitae
Exhibit 216	Zimmerman expert report
Exhibit 217	Declaration of Charles R Joyner & Exhibits A-E
Exhibit 218	Declaration of Stephen Lawrence & Exhibit A
Exhibit 219	Plaintiffs' Supplemental Answers to Defendant's Second Set of Interrogatories- Nos. 22, 23

Exhibit 220	Plaintiffs' Supplemental Answers to First Set of Defendant's Interrogatories
Exhibit 221	Latin, <i>Ideal v Real Regulatory Efficiency</i> , 37 Stan. L. Rev. 1267
Exhibit 222	Richards & Calvert, 15 UCLA Ent. L. Rev. 55
Exhibit 223	Inspection Product Lists
Exhibit 224	FBI 2257 checklist (from Dead Men Hanging rpt)_REDACTED2
Exhibit 225	FBI 2257 Inspection Review Form example (from Robert Hill)_REDACTED2
Exhibit 226	FBI 2257 Regulatory Inspection Summary
Exhibit 227	FBI FD-302 example (from Robert Hill)_REDACTED2
Exhibit 228	FBI Inspection Program - Final Progress Report 2-22-2008
Exhibit 229	Screenshots from 18xgirls
Exhibit 230	Screenshot from Bitchcrawler
Exhibit 231	Screenshots from FTV Girls
Exhibit 232	Google Search Screenshots
Exhibit 233	Screenshots from Lethal18.com
Exhibit 234	Screenshot from Moms Bang Teens
Exhibit 235	Screenshots from Pornhub
Exhibit 236	Printouts from Facebook
Exhibit 237	Screenshots from xxxBlackbook
Exhibit 238	Screenshots from Adult Friend Finder
Exhibit 239	Screenshots from Adult Match Doctor
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Exhibit 241	Screenshots from Affairs Club
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Exhibit 243	Screenshots from Amateur Match
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Exhibit 247	Screenshots from Be Naughty
Exhibit 248	Screenshots from Date a Cougar
Exhibit 249	Screenshots from Fling.com
Exhibit 250	Screenshots from Get It On
Exhibit 251	Screenshots from Hook Up
Exhibit 252	Screenshots from Horny Matches
Exhibit 253	Screenshots from IwantU
Exhibit 254	Screenshots from Letsbang
Exhibit 255	Screenshots from Naughty Connect
Exhibit 256	Screenshots from Sex in Your City
Exhibit 257	Screenshots from Swinger Zone Central
Exhibit 258	Screenshots from Up for it

Exhibit 259	Screenshots from Xhookups
Exhibit 260	Screenshots from Xhamster-Mature Porn Videos
Exhibit 261	Screenshots from YoJizz-Mature Porn Tube Videos
Exhibit 262	Screenshots from XVIDEOS-grannies videos
Exhibit 263	Screenshots from MadThumbs-Newest Mature Videos
Exhibit 264	Screenshots from YouPorn - Mature Sex Porn Tubes
Exhibit 265	Screenshots from Tnaflx - Mature Sex Videos
Exhibit 266	Screenshots from Spankwire - Milf Porn Tube
Exhibit 267	Screenshots from Redtube - Granny sex videos
Exhibit 268	Screenshots from Porncor-Mature
Exhibit 269	Screenshots from Boysfood-Mature Porn
Exhibit 270	Screenshots from Yuvutu.com
Exhibit 271	Screenshots from Tube8.com-Mature
Exhibit 272	Screenshots from FreeViewMovies-Mature
Exhibit 273	Screenshots from PornoTube-Grannies
Exhibit 274	Screenshots from Empflix - Granny
Exhibit 275	Screenshots from 3Xupload - Mature
Exhibit 276	Screenshots from Eskimo Tube - Granny
Exhibit 277	Screenshots from KeezMovies - Mature
Exhibit 278	Screenshots from XNXX - Granny
Exhibit 279	Screenshots from ClearClips - Granny
Exhibit 280	Screenshots from EFUKT - Granny
Exhibit 281	Screenshots from KoosTube - Mature
Exhibit 282	Screenshots from Alotporn - Grannies
Exhibit 283	Screenshots from Xtube - Grannies
Exhibit 284	Screenshots from Xpeeps - mature
Exhibit 285	Screenshots from Sell Your Sex Tape
Exhibit 286	Screenshots from Pawn Your Sex tape
Exhibit 287	Screenshots from See My Sex Tapes
Exhibit 288	2257 Compliance Statements
Exhibit 289	Screenshots from All Good Video
Exhibit 290	Screenshots from Angry Young Man
Exhibit 291	Screenshots from Bacchus - Filmco
Exhibit 292	Screenshots from Cinema Play - Adult.com
Exhibit 293	Screenshots from Darkside Entertainment
Exhibit 294	Screenshots from Diabolic
Exhibit 295	Screenshots from Don Goo
Exhibit 296	Screenshots from Erotic Angel dba K-Beech
Exhibit 297	Screenshots from Evasive Angels
Exhibit 298	Screenshots from Ghost Pro - Fifth Element
Exhibit 299	Screenshots from JT Video

Exhibit 300 Screenshots from Moonlight Entertainment
Exhibit 301 Screenshots from Private dba Pure Play Media
Exhibit 302 Screenshots from Robert Hill
Exhibit 303 Screenshots from RWG
Exhibit 304 Screenshots from Shane's World
Exhibit 305 Screenshots from Wicked
Exhibit 306 First Declaration of Adriana Vecchio
Exhibit 307 Second Declaration of Adriana Vecchio
Exhibit 308 Declaration of Kathryn Wyer
Exhibit 309 Declaration of James Schwartz
Exhibit 310 Second Declaration of Hector Bladuell

FBI Exhibits²

2006-7-24 Diabolic
2006-8-1 Robert Hill
2006-8-16 All Good Video
2006-9-11 Silver Star
2006-9-12 Darkside
2006-9-27 Evasive Angels
2006-10-1 Tennervision
2006-12-14 1 Private
2006-12-14 Erotic Angel
2007-1-24 Wicked
2007-3-13 Dead Men Hanging
2007-3-21 Robert Hill
2007-3-27 Angry Young Men
2007-4-9 Darkside
2007-5-3 Moonlight
2007-5-7 Shanes World
2007-5-22 Don Goo
2007-5-31 JT Video
2007-6-19 Bacchus - Filmco
2007-6-27 Cinema Play
2007-7-19 Gentlemens Video
2007-8-2 Temptations
2007-8-20 Agency
2007-8-22 Authentic Xtreme
2007-9-17 1 Real Wild Girls
2007-9-17 Alexis Lords

² As indicated below, the parties have agreed to treat plaintiffs' listed versions of the exhibits below (Plaintiffs' Exhibits 1-32) as joint exhibits. Defendant therefore does not provide a separate exhibit number for these exhibits.

2007-9-18 Candid Cam
2007-9-18 Fifth Element
2007-9-19 Pony Boy
Authentic supplement
Inspection Letters

ESTIMATE OF LENGTH OF TRIAL

The Court has scheduled trial to begin on June 3, 2013. Defendant will begin presenting testimony on June 7, 2013, with additional testimony presented June 12 – 14, 2013 and June 17, 2013. Rebuttal and surrebuttal, if necessary, have been scheduled for June 17, 2013 and June 27, 2013.

STIPULATIONS AND OBJECTIONS TO EXHIBITS/EXPERT TESTIMONY

The parties have agreed to stipulate admissibility and use jointly the reports prepared by the Federal Bureau of Investigation regarding past 2257 inspections, Plaintiffs' Exhibits 1-32. Although marked as plaintiffs' exhibits, the Court should treat them as joint exhibits.

Defendant has filed a Motion to Exclude the testimony of Daniel Linz, Michelle Drouin and Marc Zimmerman, under Rule 702, Federal Rules of Evidence and *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which is currently pending before the Court and sets forth defendant's specific objections to the testimony of those individuals. Defendant continues to maintain those objections and reserves the right to assert them at trial as appropriate.

Defendant also reserves the right to object to the admissibility of plaintiffs' evidence once exhibits have been exchanged by the parties and defendant has an opportunity to review plaintiffs' proposed exhibits.

Dated this 23th day of May, 2013.

Respectfully submitted,

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Acting Assistant Attorney General
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CERTIFICATE OF SERVICE

Pursuant to Local Rule 5.1.2(8)(b), I hereby certify that the foregoing Pretrial Memorandum has been filed electronically and is available for viewing and downloading from the ECF system. I further certify that the foregoing document was served via ECF on counsel of record for plaintiffs in the above-captioned case.

Dated: May 23, 2013

/s/ Kathryn L. Wyer